

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

In re Wal-Mart Wage and Hour
Employment Practices Litigation

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MDL 1735
2:06-CV-0225-PMP-PAL

JOINT MOTION TO STAY APPEAL BOND *NUNC PRO TUNC*
AND OPPOSITION TO SANCTIONS

Objectors-Appellants Stephanie Swift, Fatima Andrews, Deborah Maddox and Jessica Gaona ("Appellants") hereby move to stay the appeal bond entered by this Court on March 8, 2010 *nunc pro tunc* as of the date the Appellants filed their Notice of Appeal from the bond order, or March 9, 2010.

First, it is undisputed that the Claims Administrator has not yet produced its final claims accounting called for under Section 8.10 of the Settlement Agreement, or provided that accounting to Class Counsel or Wal-Mart as called for in that provision. This is a prerequisite before any funds may be distributed to claimants. Class Counsel has stated that this accounting has been delayed solely as a result of the late claims deadline set for the Home Office class. Therefore, Appellants' appeals have as a factual matter not caused one day of delay in the implementation of the settlement.

Second, before a Court may enter a sanction for civil contempt, the contemnors must have an opportunity to demonstrate that they are unable to comply with the order at issue. *FTC v. Affordable Media, LLC*, 179 F.3d 1228, 1239 (9th Cir. 1999). "A party's inability to comply with a judicial order constitutes a defense to a charge of civil contempt." *Id.* (citing *U.S. v. Rylander*, 460 U.S. 752, 757 (1983)). Attached to this Motion are the affidavits of each of the four Objector-Appellants, attesting to the fact that none of them can afford to pay the exorbitant bonds imposed upon them by this Court.

WHEREFORE, Objector-Appellants Stephanie Swift, Fatima Andrews, Deborah Maddox, and Jessica Gaona request that this Court GRANT their Joint Motion to Stay the Appeal Bond Order, and that the Court GRANT that Motion *nunc pro tunc* to make the stay effective as of March 9, 2010, and that the Court DENY Class Counsel's request for sanctions for Appellants' failure to comply with the Appeal Bond Order.

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Deborah Maddox,
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By their attorneys,

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CERTIFICATE OF SERVICE

The undersigned certifies that on May 21, 2010 he filed a true copy of the foregoing document by the ECF filing system which resulted in an electronic notice of the filing of this document on all counsel of record.

/s/ John J. Pentz

John J. Pentz